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SUBJECT: UPDATE ON AMNESTY IMPLEMENTATION

Classified By: POLCOUNS Matthew H. Tueller for reasons 1.4 (b) and (d)

¶1. (C) Summary: The General Amnesty Law passed by the COR on February 13 is now in effect, and Chief Justice Medhat al-Mahmoud continues to issue implementing regulations that address only administrative aspects of the law. Already families and concerned individuals have lined up at courthouses around the country to obtain and submit application forms that direct the adjudicating committees to consider the files of a detainee. Although some Arab media has reported that detainees were released under the legislation, all information that Post and the PRTs have gathered indicates that the committees are only beginning to look at the case files and that no releases have been officially reported. End summary.

¶2. (SBU) According to Judge Fa'iq, the Chief Investigative Judge at the Central Criminal Court, appellate courthouses around the country began on March 2 to provide the public with the application forms that initiate the amnesty process. In Baghdad, the forms will also be available at all courthouses. After initially requiring family members or representatives of a detainee to turn in the completed form to the courthouse in which the detainee was convicted or where his hearings were conducted, Chief Justice Medhat agreed this might be a burden to some and ordered that applications could be turned in at any courthouse. Print, radio, and television media have announced the availability of the forms, and Fa'iq expected thousands to be distributed. By the second day of the distribution, the Central Criminal Court at Karkh had already given out over 700 forms; more complete and more geographically widespread numbers will be available in the coming week.

¶3. (C) Medhat has already made a number of administrative decisions that show his enthusiasm to implement the law. He has assigned judges to adjudicating committees around the country, with at least one in each appellate district; he has formed multiple committees in areas with an anticipated greater demand, such as the five committees in the Karkh district and the three in the Rusafa district of Baghdad. Noting that the juvenile and female populations are the most vulnerable in detention, he has promulgated a regulation requiring the committees to prioritize those cases first. He has also instructed investigative judges and trial panels to conduct a cursory review of case that come before them, and to send the files of any such case in which the amnesty statute would appear to apply, regardless of whether a formal application has been filed, directly to the reviewing committee. (Comment: Although the law requires committees to consider claims in which applications have been filed, the law does not make an application a prerequisite to eligibility for amnesty. End comment.)

¶4. (C) However, Medhat still refuses to use his role as the primary implementer to address any of the legal concerns he has noted with the law. For example, unlike the rest of the provisions within the law, Article 3(b), which releases "any detainee if he had been detained for more than six months and

had not appeared before the investigating judge or was detained for over a year and was not referred to the competent court," does not by its terms exclude those who are charged with one of the crimes listed in Article 2. Thus, under the most literal approach to Article 3(b), a person charged with murder could be released as soon as a year has passed from his detention if he has not been brought before a trial panel. The other approach, suggested by Judge Fa'iq, is to read Article 3 as informed by Article 2, and thus deny the most serious defenders the benefit of what he termed a "loophole."

15. (C) Since the appeals process for the amnesty statute stops at panels formed from the provincial appellate courts, and provides for no review by the national Court of Cassation or any other court with nationwide jurisdiction, different provinces are likely to have widely divergent interpretations of ambiguous provisions in the law, thus treating similarly situated detainees differently. Judge Fa'iq commented, "I assure you, each province will issue its own decision about the amnesty law based on its own preference." Some would stretch the amnesty statute widely; others would construe it narrowly. One of Medhat's administrative provisions would partially address such inconsistencies by forming a committee that is supposed to look out for mistakes around the country and offer recommendations to fix them, but its mandate and scope are more vague than the law itself and likely unable to prevent major inconsistencies.

16. (C) Although Al-Itihad News reported very early that 350 detainees had been released under the General Amnesty Law, we have no credible accounts of any detention facility releasing prisoners under the law. PRTs around Iraq have engaged with the local prisons and report that no prisoners have been

BAGHDAD 00000726 002 OF 002

released, but they do report that the adjudicating committees have been formed and are already considering cases.

17. (C) One outstanding concern of Chief Justice Medhat is the negative influence that other Ministries could have in withholding criminal files from the adjudicating committees. GOI officials, such as the warden of the largest juvenile detention facility, have reported instances in which case files were only turned over in exchange for a bribe. Although PM Maliki's overall strategy document for amnesty includes a provision instructing the ministries to hand over these files, the law has no such provision and we have not yet seen an executive order issued by Maliki that would enforce this.

18. (C) Comment: Even with its problems, the law is a significant piece of legislation aimed at national reconciliation. We are as yet unable to confidently predict the percentage of the detainee population that will probably be released, but Post feels the law will benefit Sunnis on a much greater scale than their counterparts in detention. If the implementation of the law continues without major security breaches, such as an attack on those waiting in line for amnesty applications, and if the law can be implemented without public suspicion that the amnesty program is being marred by sectarian or regional pressures, PM Maliki's amnesty initiative will be viewed as a powerful gesture towards the Sunni populations. End comment.
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